STATE OF MICHIGAN

COURT OF APPEALS

DETROIT FIREFIGHTERS ASSOCIATION, I.A.F.F. LOCAL 344, Plaintiff-Appellee,	UNPUBLISHED May 9, 2006
v	No. 266654 Wayne Circuit Court
CITY OF DETROIT, Defendant-Appellant.	LC No. 05-526691-CL

Before: Schuette, P.J. and Bandstra and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right the grant of an injunction in favor of plaintiff, in accordance with MCL 423.243, forestalling implementation of defendant's 2005-2006 budgetary plan necessitating firefighter layoffs and restructuring of the Detroit fire department. We affirm.

The Detroit Fire Fighters' Association ("DFFA") and the City of Detroit ("City") are parties to a collective bargaining agreement ("CBA") that expired on June 30, 2001, and are parties to a compulsory arbitration proceeding to establish a successor agreement, pursuant to MCL 423.231 (commonly known as Act 312). The existing CBA is to remain in effect pending the outcome of the arbitration. Responding to its current budget crisis, the City on July 1, 2004 compelled layoffs of some fire fighters and announced some restructuring of the fire department. In September, 2005, the City announced a proposal for additional layoffs and restructuring to address budget concerns. DFFA responded, the parties conferred but were unable to agree, and DFFA initiated the instant litigation, requesting declaratory and injunctive relief requiring the City to await the outcome of the ongoing arbitration proceedings before making any changes to the status quo. The trial court issued the injunction, finding that implementation of the City's proposal "may implicate mandatory provisions of collective bargaining, namely the impact on [sic] the Plan on the hours and conditions of employment (including the safety) of the members of the plaintiff." Defendant filed this appeal.

Defendant first argues that layoffs are permissive rather than mandatory subjects of bargaining, and the court therefore erred in granting injunctive relief based on section 13 of Act 312 (MCL 423.243).

A trial court's grant or denial of a temporary injunction is reviewed for abuse of discretion. *Michigan Coalition of State Employee Unions v Civil Service Comm*, 465 Mich 212,

217; 634 NW2d 692 (2001). To the extent that this issue pertains to the interpretation and enforcement of MCL 423.243, it presents a question of law that this Court reviews de novo. *Shorecrest Lanes & Lounge, Inc v Liquor Control Comm,* 252 Mich App 456, 460; 652 NW2d 493 (2002).

The public employment relations act ("PERA"), MCL 423.201 *et seq*., governs labor relations in the area of public employment. PERA imposes a duty on employers and unions to collectively bargain on matters comprising "mandatory subjects of bargaining." *Detroit v Michigan Council 25, AFSCME,* 118 Mich App 211, 215; 324 NW2d (1982). A mandatory subject of bargaining is one that imposes a significant or material impact on "wages, hours and other terms and conditions of employment." MCL 423.215(1); *Southfield Police Officers Ass'n v Southfield,* 433 Mich 168, 177; 445 NW2d 98 (1989).

The existing Collective Bargaining Agreement between the parties reserves to the City "the right to lay off personnel for lack of work or funds; [sic] or for the occurrence of conditions beyond the control of the Department." (CBA, 2D) The parties here agree that layoff decisions themselves are not a mandatory subject for bargaining. However, our Supreme Court has found that "[w]hile the initial decision to lay off is not a mandatory subject of bargaining, the impact of that decision is an issue for bargaining." *Metropolitan Council No 23 v City of Center Line,* 414 Mich 642, 661; 327 NW2d 822 (1982). In reaching this conclusion, the Court specifically referred to cases where layoff proposals were "bargainable to the extent that [they] related to workload and safety." *Id.* at 662.

In *Center Line*, the Court noted an opinion of the Wisconsin Supreme Court that found the effects of layoffs to be a mandatory subject of bargaining by reasoning that:

> 'A reduction in the total work force caused by the economically motivated layoffs will affect the number of employees assigned to a particular shift and thus alter their individual fire fighting responsibilities. Therefore, there is a primary relation between the impact of the lay off decision and the working conditions of the remaining unit employees.' [*Id.* at 663 (citation omitted).]

While the Court found that case factually distinguishable from its own facts in *Center Line*, we find it directly applicable here.

The trial court determined that a question of fact existed as to safety for firefighters if the proposed layoffs and restructuring were implemented. The trial court took testimony on how response times to fires would be affected, safety concerns pertaining to firefighters having to travel greater distances to fire scenes, the potential for increased risk where these delays exacerbated the fires, the impact on availability of personnel to meet the four-person-per rig mandate, and the requirement that less-senior officers would manage fire scenes because of the reduction in the number of battalion chiefs and their duty reassignments.

We agree with the trial court and hold that where, as here, proposed layoffs and restructuring may impact the safety of working conditions for firefighters, those proposals are mandatory subjects of bargaining.

Defendant next argues that the CBA reserves to the City the right to restructure the fire department if necessary: "It is not the intent of this Article to restrict, interfere with, prevent or hinder the City from carrying out its duties and responsibilities to the public well being . . . ." (CBA, 14). However the provision defendant relies on includes two other relevant clauses: it begins by establishing that "[w]ages, hours, and conditions of employment legally in effect on the effective date of this agreement shall . . . be maintained during the term of this Agreement"; it ends with the caveat that the City's rights are "subject to the City's obligations under [the] PERA and other laws." *Id.*

As a threshold matter, section 15 of the PERA defines matters of "wages, hours, and other terms and conditions of employment" as mandatory subjects of bargaining. MCL 423.215. The CBA plainly balances the City's management prerogatives against the requirements of the PERA, and the PERA here clarifies that conditions of employment are not subject to unilateral change. See *Ishpeming Supervisory Employees' Chapter of Local 128 v City of Ishpeming*, 155 Mich App 501, 509; 400 NW2d 661 (1986) (Once a subject is defined as a mandatory subject of bargaining, "neither party may take unilateral action on the subject absent an impasse in negotiations.").

The City further argues that, in any event, the proposed restructuring does not alter staffing of fire fighters at the scene, so injunctive relief was inappropriate. However, as defendant admitted in its answer to plaintiff's complaint, defendant's restructuring plan will require whichever fire fighter is the "senior member" at the scene to "act in the supervisory capacity," including handling the role of battalion chief in managing fire scenes. Defendant contends this is not an unusual practice at "less complex fires" and does not preclude firefighters from calling a battalion chief to a scene if needed. Defendant contends restructuring of the fire department is a matter exclusively within its control because it involves its obligation to insure public safety. Even if such an assertion is correct, it "does not alter the fact that the decision will have a significant impact on the fire fighters' employment." *Plymouth Fire Fighters Ass'n v City of Plymouth*, 156 Mich App 220, 223; 401 NW2d 281 (1986). And this Court has previously found, where restructuring of work responsibilities was necessary after laying off some workers, that "the decision to transfer work in pursuit of a legitimate reorganization effort was not a mandatory subject of bargaining, but the impact of that decision was an issue for bargaining." *Ishpeming supra*, at 508.

Defendant argues the CBA allows for assigning employees "on a temporary basis to perform the duties of a higher classification." However, defendant's restructuring plan indicates that a firefighter of any rank might be called upon to assume the duties of a battalion chief, and the list of temporary assignments in the CBA allows for firefighters to perform tasks only one grade above their rank. (CBA, 17A). The scope of change proposed by defendant exceeds its express authority as outlined in the CBA. This Court has ruled that "where an employer institutes a practice not expressed in the collective bargaining agreement, the practice may constitute a term of employment which is not subject to unilateral change." *Plymouth Fire Fighters Ass'n, supra*, p 224.

Plaintiff's claims fall into two separate causes of action: first, a claim under Act 312, MCL 423.231 *et seq.*, based on defendant's unilateral actions during the pendancy of ongoing arbitration; second, under the PERA, MCL 423.201 *et seq.*, based on defendant's statutory obligation to bargain on mandatory bargaining subjects. To succeed on either claim, plaintiff

must establish that defendant has failed to bargain on a mandatory bargaining subject. We reiterate that "while manpower issues are not mandatory subjects of bargaining and therefore cannot be compelled in an arbitration award, there is a duty to bargain over the impact of manpower decisions to the extent that they relate to workload and safety." *City of Sault St*e *Marie v Fraternal Order of Police Labor Council*, 163 Mich App 350, 356; 414 NW2d 168 (1987). We further note that the bare assertion of an effect on workload and safety is insufficient; some evidence must support the assertion that manpower and staffing changes will impact safety. *Id.* Here the trial court heard testimony on the impact of defendant's proposed layoff and restructuring plan on firefighter safety and work conditions. The court found the evidence established "serious issues of fact" as to whether the proposed changes would impact safety, working conditions and working hours, so the proposed changes were subjects of mandatory bargaining, and defendant could not therefore make these unilateral alterations while the parties are engaged in compulsory arbitration. We agree and find Act 312 and the PERA were properly applied and the injunction correctly granted.

Affirmed.

/s/ Bill Schuette
/s/ Richard A. Bandstra
/s/ Jessica R. Cooper